THE VOTING RIGHTS ACT AND STATE BEHAVIOR:

HOW SECTION 5 COVERAGE HAS SHAPED STATE AND LOCAL POLICY

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Submitted under the supervision of Andrew Karch to the University Honors Program at the University of Minnesota-Twin Cities in partial fulfillment of the requirements for the degree of Bachelor of Arts, *summa cum laude* in Political Science.

May 8, 2015

Abstract

From the passage of the Voting Rights Act (VRA) in 1965 until the summer of 2013, several states were required to submit all electoral policies for preclearance, usually received by the Attorney General. This practice was codified by Section 5 of the VRA and targeted states and localities that had a history of discriminatory and restrictive electoral policies directed at limiting the influence of language and racial minorities. After the Supreme Court's 2013 decision in Shelby County v. Holder, *some formerly covered jurisdictions responded to their newfound freedom from preclearance by implementing restrictive policies. The controversial Court decision and subsequent spate of potentially discriminatory election policies have raised questions about the past and future efficacy of the VRA and Section 5. Guided by the debate over the relevance of the VRA, this Paper examines the policy history of ten states formerly covered by Section 5, as well as recent developments from similar states that were never covered, Documenting each policy objected to by the Attorney General provides a framework to examine which states were the biggest offenders and what methods they employed in their attempts to limit minority voting influence. Using the previous half-century of data as a basis for understanding contemporary policy developments, this Paper finds that preclearance remains an important tool in combatting restrictive policies, at least in some specific states and localities. Moreover, this historical analysis paired with an overview of recent state behavior informs current and future discussions about a revised version of preclearance coverage.*

Balancing Rights: States' Interaction with the Voting Rights Act

In June 2013, the Supreme Court handed down a landmark decision regarding the Voting Rights Act of 1965 (VRA), an integral piece of federal legislation rooted in the Civil Rights Movement. The bill, which guaranteed equal access to the polls and nondiscriminatory election policies, immediately resulted in greater African-American participation and representation in politics. However, the recent Supreme Court decision on *Shelby County v. Holder* held that part of the VRA was no longer an acceptable tool for ensuring equality in the electoral process. Claiming that the "extraordinary measures" taken by the VRA to combat voting discrimination were constitutionally unfounded because of its "disparate treatment of the States," Chief Justice John Roberts argued the majority opinion of the narrow, 5-4 vote.[1] This nuanced decision effectively gutted the chief regulatory power of the VRA, striking down Section 4b of the law, which included the coverage formula to determine which jurisdictions qualified for federal preclearance

regarding any new election policies or procedures as ensured by Section 5. With states and localities no longer subject to preclearance, the VRA was diminished to primarily a reactive rather than proactive role in combatting discriminatory election policies.

What has been the policy history of states and localities with respect to their Section 5 coverage under the VRA? In this study, I compile and evaluate election policies from the states formerly covered by Section 5 of the VRA, which necessitated federal preclearance for all state election policy. Additionally, I compare their recent policymaking behavior to their demographically and ideologically similar neighbors, which were never subject to Section 5 and therefore provide a look at how theoretically similar states have operated without an identical history of election policy regulation. The election policies passed by the ten state sample and subsequently objected to by the United States Department of Justice (DOJ) are evaluated with respect to when they were enacted, the level of government at which they originated, and the category of electoral restriction they fall into. Comparing this codified history with policy patterns of the four states never covered by Section 5 provides insight into the successes and shortcomings of the VRA. Using DOJ records, a National Conference of State Legislatures database, and reports on recent state developments, I include each relevant restrictive policy to shape a policy narrative and analysis of the diverse ways that state, county, and city lawmakers have interacted with the VRA throughout its history. With these data, conclusions can be drawn about when states and local governments were most active in enacting restrictive policies, as well as what factors may influence variation in their individual policy profile.

Given the unequal implementation of Section 5 of the VRA throughout its history, its effective repeal by the Supreme Court and the subsequent state election policies enacted can also be an opportunity to judge the status of the tricky balance between states' rights and racial

equality in voting. Comparing these results to demographically similar states that were not covered by Section 5 helps to set a benchmark for the expected outcomes of state election policy free from federal preclearance during these periods. Examining the level of Attorney General objections to election laws passed in different states or at different periods exposes the consistency, or lack thereof, of federal efforts to abolish electorally restrictive policies. Understanding the experiences of similar states helps contextualize the extent of the legislative reach held by Section 5 covered states and localities. Finally, a preliminary verdict can be reached about the continued relevance of the VRA. This analysis finds that certain protections and regulations of the Act are still necessary to carry out the Act's intent, and avenues to reinstate some form of preclearance must be fervently pursued.

Since 1965, states that were fully covered by Section 4b of the VRA, due to their history of voting discrimination, had to wait for federal preclearance before any policy affecting elections and voting could be enacted. Needless to say, the governors, state legislatures, and citizens of these nine, mostly southern states were frustrated with the process, as it delayed legislation and infringed upon state autonomy. Expansion of the VRA in 1982 to include any legislation that *resulted* in a discriminatory outcome, whether or not it was *intended*, fueled the resentment of the covered states. Over the nearly five decades of the Act's existence, these states were limited in what legislation was allowable, but this dynamic came to an abrupt halt after the 2013 Supreme Court decision. In response, many states that were previously subject to preclearance passed election policies, some of which mirrored legislation that was originally denied. This quick step to action was at least in part an affirmation of state and local policy preferences in election policy decision-making, and the laws have carried considerable ramifications.

Writing as the representative for the dissenting faction of the Supreme Court decision, Justice Ruth Bader Ginsburg questioned the logic behind the repeal, asserting, "history repeats itself," due to the regression in federal protection of racial equality.[2] Is she correct in this evaluation of the consequences of giving state and local governments freer reign in policy decisions, though? Scholars questioned the future necessity of the VRA in light of the progress that it had made, wondering if the Act had run its course,[3] or was even a victim of its own success.[4] These works and other explored the idea that the VRA developed into an imperfect solution for an ongoing issue. Speculation as to the longevity of the Act in anticipation of its 2006 renewal was fueled both by the advancement of African-American and other minority groups in political influence, and by the growing impetus placed on passing specific, controversial policies by many of the states covered by the VRA. While the scholarship was in relative agreement that the VRA had been effective in its core goal of leveling the electoral playing field, the dilemma of continuing to enforce the Act at the expense of state autonomy was unsettled. Stemming from the concept of states as federally "conquered provinces,"[5] the notion of regulation has been inexorably connected to the VRA, especially because the preclearance provision only applies to certain states and localities.

Entering a new era devoid of the VRA's strongest regulatory control, there is no better time to research the fallout of such a momentous Supreme Court decision. While the issue of electoral participation across race and ethnicity is foremost in the ultimate judging of the VRA's success, approaching this unique dynamic from a state and local lawmaking perspective helps tease out the struggles involved with forming and enforcing election policies. Building on prior research, my goal in this paper is to describe the policy arc of covered states and localities, while

informing the current Congressional discussion on the future of the VRA and the question of preclearance.

The level of state autonomy in election policy was once contingent on its Section 5 status under the VRA. Uncovered states were able to immediately install new policies, while covered states had to wait months or longer in order to navigate the necessary steps to achieve preclearance. If the VRA had truly reached its primary goals, the initial policies enacted after the 2013 Supreme Court decision should not have been any more electorally restrictive than other policies that were allowed through during between 1965 and 2013, since states would theoretically be reformed through fifty years of oversight. Despite the absence of a clear formula for determining preclearance, the immediate response of newly autonomous states passing restrictive legislation indicates that voting problems continue to be found through the transgressions of state and local policies.

Examining this issue puts two constitutional protections in opposition. Traditionally, the right of states to administer their own elections and set election law has been protected under the reservation of powers in the Tenth Amendment. However, the Fifteenth Amendment explicitly grants Congress the power to act in order to protect the right to vote regardless of race. The VRA, and especially the preclearance provision in Section 5, is an instance where the Fifteenth Amendment is necessarily enforced through a narrower reading of the Tenth Amendment. Pitting the merits of these two amendments against one another, this paper explores the nature of state and local restrictive election policies and their interplay with the VRA throughout the last half-century. Until the transition can be made to a period in which only Section 2 of the VRA (no preclearance) is needed without compromising equality of voting, it is clear that some form of federal preclearance remains sensible and necessary, at least in some specific cases.

Voting Rights Act: Enabling or Restrictive?

Given the sweeping advancement in voting equality precipitated by the VRA, it is easy to understand why many in favor of racial equality in electoral processes have hailed the bill as the most monumental legislation of the Civil Rights Era. After its passage in 1965, state and local authority over elections was severely curtailed, especially for the states subject to preclearance under Section 5, which shifted the policymaking burden of proof to the states. The implication of VRA legislation became apparent: protection of minorities' right to representation through voting outweighed the reservation of electoral lawmaking power enjoyed by the states. While this naturally remains a controversial trade-off, the effect has been a disparity in legislative reach between covered and non-covered states until only recently. Moreover, the 1982 expansion of the VRA to combat bills that *resulted* in a discriminatory effect in addition to those *intended* to discriminate marked a continuation of the debate about how the act was implemented.

HISTORICAL FRAMEWORK OF THE VRA

In order to understand the body of VRA literature and this analysis, I must first share the background and structure of the relevant sections of the Act. The crux of the VRA is found in the language of Section 2, which "prohibits voting practices or procedures that discriminate on the base of race, color," or membership in a designated language minority group.[6] Unlike other parts of the VRA, Section 2 did not have an expiration date, and continues to be in effect today. The Supreme Court's 1980 decision in *Mobile v. Bolden* held that Section 2 was a restatement of the Fifteenth Amendment, which prohibits the denial of the right to vote based on race.[7] All states, counties, cities, and other jurisdictions are subject to Section 2, and lawsuits filed against discriminatory voting policies stem from these provisions.

Responding to racial discrimination and disparity in voter turnout in certain regions of the United States, Congress' inclusion of Section 4 in the VRA sought to preempt the possibility of restrictive policies by creating a formula for additional coverage and federal review. States and political subdivisions were flagged by the Section 4 formula if: the state maintained a "test or device" restricting registration or voting (ex. literacy test); and less than 50 percent of the voting age population was registered or actually voted in the 1964 presidential election.[8] In 1975, this formula was expanded to include the practice of providing any election information only in English in areas where a "single language minority constituted more that five percent of the citizens of voting age."[9] This provision added Alaska, Arizona, and Texas to the list of the fully covered states under Section 5. The formula was renewed four times despite no changes being made after 1975: in 1970 for five years, 1975 for seven, 1982 for twenty-five, and 2006 for twenty-five. It is this section, however, that the Supreme Court invalidated in 2013. Ruling that the formula was outdated and therefore unconstitutional, the Court's decision had serious repercussions for Section 5 of the VRA.[10]

The special provisions afforded to the states covered by Section 4 of the VRA were found in Section 5, which mandated federal preclearance in these states and subdivisions. Because of their history of racial discrimination and restrictive voting practices, all changes regarding voting or elections had to be approved by either the U.S. District Court in the District of Columbia or by the Attorney General.[11] The requirement of "preclearance" before enforcement of these laws aimed to prevent the discriminatory practices outlined in Section 2. Targeting specific states and jurisdictions through the Section 4 formula created the system in which nine states were fully covered, and many more counties and townships were individually covered. Due to the 2013 Supreme Court decision in *Shelby County v. Holder*, Section 5's preclearance provision no

longer applies because Section 4 was ruled unconstitutional. It is important to note, however, that if Congress acts to update the Section 4 formula, Section 5 would be restored, as it was not directly declared unconstitutional by the Court.

Before the Supreme Court decision, the conversation about the reach of the VRA centered on two opposing outcomes of the legislation. The first factor was the extent to which minority citizens were enabled to freely and legally exercise their right to vote, which reflects the intent of Congress. Secondly, the degree to which state and local lawmakers were restricted from exercising their own authority over the electoral process was a primary concern, too. Scholars have studied this delicate balance between the enabling and restrictive components of the legislation and unsurprisingly have found it difficult to weigh one against the other. Evaluations of the history of the VRA have resulted in competing explanations of its role in American democracy. Considering the position of the VRA within federalism specifically, scholars have offered a number of perspectives that inform this analysis of how regulation of state legislatures interacts with their lawmaking capability. In particular, these include two main areas of analysis and critique: challenges to the effectiveness of the VRA today, and the idea of states as conquered provinces. The conversation up until now has established that the VRA has unevenly limited state legislatures' election policy autonomy while resulting in greater minority representation, but the relationship has not been assessed through a study of which policies have been enacted and where, especially since the overturn of the act.

Much of the historic contestation over the VRA has been due to the tension of election law and democracy outlined by Richard Pildes.[12] In short, election policies fall on a spectrum between "full and fair representation" and "democratic citizenship."[13] The former refers to the ideal that the government should reflect the demographic makeup of its constituents, while the

latter endorses the ideal of one vote a person and majority rule. Compounded by the VRA, this schism did and continues to form the basis for decisions regarding which policies are denied and allowed by the federal government. Building on this dichotomy, much of the scholarly literature delves into legal and developmental history, using court cases to show the evolution of the VRA and its function in American politics.[14]

Of course, the dynamic between race and the VRA has produced a broad scholarly discourse. With respect to this extensive research (consult Guinier,[15] Hutchings and Valentino,[16] Kousser,[17] and Crowley[18] for more on race and the VRA), the path of the VRA and its racial underpinnings is of less consequence to the question at hand, and should be reserved for other analyses. The interaction of race and voting rights is of importance to this analysis only in that it continually creates conditions that demand attention from governing bodies and lawmakers, who must adhere to the VRA and navigate its regulation when enacting electoral policies. This paper, however, focuses on the specific action of state legislatures and local governments that have been shaped by the presence of the VRA as the central regulator of election policy.

THE SUCCESS OF SECTION 5

As for the effect of the VRA on voting patterns, processes, and policies, there is a strong body of research that spans the life of the bill. With the coverage formula installed by Section 4, most of the states covered overlapped with former Confederate territory, which came as little shock to the framers of the legislation. Consequently some of the immediate effects were expected, such as increased black registration and turnout. Jeffrey McMillen's 1994 case study of Jefferson Parish in Louisiana outlines the incremental proliferation of the VRA within a singular community.[19] While giving credit to the bill as a whole for its ability to include blacks in the

political process and combat unfair policies, McMillen argues that Section 2 was the true "catalyst" of the VRA, in terms of black participation.[20] His research concludes that if the revolutionary change precipitated by the VRA can happen in Jefferson Parish, a notoriously segregated area, it was strong enough to take hold anywhere.

McMillen's assessment of the VRA is supported by studies conducted in different times and places, and those that address different protected minorities. For instance, Parkin and Zlotnick's study of Latino communities published in 2014 finds that the language requirements for registration materials have a positive effect on registration among Latinos who speak English very well.[21] On a national level, Ansolabehere et al. analyzed the 2008 election with a focus on the results from states depending on their preclearance status under Section 5.[22] This election merited special consideration given that the Democratic nominee, Barack Obama, was black, and the study's results showed progress, albeit incomplete, toward racial acceptance. In this instance, the VRA's provisions seemed to be effective at the state and national level, but racial attitudes still played a role in voting patterns, along with ideology, demographics, and partisanship.[23] One other note of interest is Jared Ellias' investigation into the VRA in the context of similarly structured voting policies from other multi-ethnic democracies around the world, which provides different, yet innovative, models of electoral achievement.[24]

A contemporary examination of the recent spate of restrictive policies enacted by states and localities further highlights the vital role of Section 5 as a check on electoral discrimination. Writing before the *Shelby County* decision, Keith Bentele and Erin O'Brien's five-year study from 2006 to 2011 leading up to the Supreme Court ruling finds that the restrictive policies are prosed and passed in a highly partisan and racialized manner.[25] Whereas other scholars viewed the VRA as a policy that was either in decline or plateauing in effectiveness prior to 2013, this

research argues that the regulatory oversight of the VRA was needed then more than ever. The authors categorically reject the notion that "covered states no longer intend to discriminate" by performing a statistical analysis showing just the opposite among policies passed within the past decade.[26] Paired with the overwhelming historical evidence of the impact of the VRA, Bentele and O'Brien make a compelling case for its continued renewal and strengthening.

One method of strengthening the VRA that has received modest attention at a few moments along the Act's history is the idea of nationwide preclearance. This VRA fix was proposed and advocated for by Dwight Aarons in 1988[27] and again by Hayley Trahan-Liptak after the *Shelby County* decision in 2014.[28] The basic idea behind the amendment to the VRA is simple: if preclearance under Section 5 prevents some states from enacting restrictive policies, why not subject all policies to preliminary inspection? Each of these authors endorses slightly different methods of achieving universal preclearance. Aarons expands on a proposal by William Keady and George Cochran, calling for a procedure that employs the local federal courts as the primary arbiters of potentially discriminatory policies.[29] With the Supreme Court decision still fresh in her mind, Trahan-Liptak advocates for mandating Department of Justice preclearance for any "key changes" to voting requirements, as defined by Congress.[30] In order to reach all policies in a timely manner, she also suggests streamlining the litigation process for Section 2 by allowing the DOJ to take over private cases.[31] Both of these arguments in favor of broadening preclearance are steeped in law and precedent, perhaps at the expense of considering emerging political realities that limit the practicality of such a plan.

ALL GOOD THINGS MUST COME TO AN END?

In the same breath as their praise of the VRA's accomplishment, scholars share a widespread refrain calling for the transformation of the policy as the rate of improvement is thought to be stagnating or potentially reversing. Especially as Congress continued to endorse the VRA with few changes post-1982, there has been a clamoring for the need to update it into something better equipped to address the goals Congress had in mind in 1965. Scholarly proposals about various aspects of the VRA include: coalition districts,[32] independent redistricting,[33] outreach to language minorities,[34] and an update to Section 2.[35]

These remedies all deal with what had been a growing question in political science: When will the VRA become obsolete, due to total racial equality at the polls? Although most scholars believe that a present need for protection remains, these beliefs have now been tested since the Supreme Court overturning of Section 4. Before this decision, however, Samuel Issacharoff argued that the preclearance provision had become a "victim of its own success," due to the legislative tactics used to skirt the intent of the law while adhering to its literal provisions.[36] In many cases, the packing of minority-majority districts perpetuates the discriminatory intent of many pre-VRA policies, limiting the ability of blacks to form coalitions and spread their political influence.[37] Similar concerns are echoed by Michael Burns, who questions the ability of Congress to fairly operate by interpreting Section 5's intent, rather than enforcing it provisions.[38] The common thread of these studies suggests that the VRA is imperfect in accomplishing its primary goals, which factored in to the Supreme Court's decision to overturn Section 4.

While the discussion above centers around the history and problems with the implementation of the VRA with respect to its foremost objectives, little attention has been paid

to the institutional changes to federalist government caused by the bill. Specifically, it is difficult to quantify the extent to which the constraints imposed by the VRA on state legislatures shaped election policies in some ways and limited it in others. It may seem intuitive that VRA regulation had a reductive effect on restrictive election policies, but there are instances of this oversight where such policies have been enacted. Even with the stipulation that discriminatory outcomes are banned, the ability and willingness of the Attorney General to combat the law remains necessary. For instance, Georgia's controversial 2006 Voter ID law was allowed, despite the state's Section 5 coverage, even in the face of internal dissent in the Department of Justice.[39] Partisan jockeying and legal maneuvers leaves the door open for opportunities for legislation to be enacted that bypasses the intent of the VRA. Examining the patterns and development of policies originating in states covered by Section 5 that were objected to contextualizes the measures passed after the Supreme Court decision and provides a more thorough look at the reach of the VRA during it's tenure.

The touchstone metaphor to describe the relationship between the federal government and states in the context of the VRA is the idea of states as "conquered provinces," coined by Ball et al. in 1982.[40] In short, this idea addresses the loss of agency in policymaking by the states requiring preclearance. Rather than being free to create and implement their own election policies, the federal government wrested control from states, which raised questions in light of the Tenth Amendment and its protections. Reevaluated by Christina Rivers in 2006, the concept of conquered provinces as a "departure from the traditional concepts of dual federalism" was found by her to be still applicable to the then current political landscape.[41]

Rivers identifies the 1982 amendment to the VRA as a pivotal moment in creating the lasting importance of the VRA. Congress' update expanded Section 2 to include policies that

resulted in racially unequal outcomes as forbidden, rather than solely intended or blatant discrimination in electoral opportunities. As Rivers argues, this opened up a new wave of policies and states subject to review, which in turn cultivated stronger federal control. In the midst of this narrative, blacks and minorities as a whole made enormous strides in representation, seemingly a victory for the VRA. Connected back to the previous arguments, though, state action must be taken into account, which manifests itself through the specific policies that are passed, or – perhaps more to the point – denied under Section 5.

The answer, as with many political science questions, remains nuanced. While scholars do not doubt the progress made regarding the VRA's intent of racially fair elections, there is widespread dissatisfaction with the means by which this end is achieved. In fact, recent research shows that the provisions of the VRA were used in some instances to reproduce racial inequality, such as purposefully "elusive wording" to trigger Section 5 and litigation delays, and the limitation on using race as a means for remedial action, such as creating minority-majority districts.[42] Furthermore courts ruled that minority rights could be met through "influence districts," rather than majority districts, which had the potential to regress some of the advances made under VRA thus far.[43] Only covering certain states and localities, the VRA set up an uneven playing field for states, leaving it ripe for challenges from state governments. Ultimately, the Supreme Court seemed to agree with Issacharoff and Rivers; Section 5 became the "Achilles heel" of the VRA, largely because of the unresolved conflict between the state and federal level as to where lawmaking power should lie.[44]

With this in mind, the immediate question following the *Shelby County* Supreme Court Decision from 2013 is to what extent coverage under Section 5 of the VRA affected state and local

policymaking. Less than two years removed from the decision, the response from formerly covered states has been rapid and visible. Understanding why state legislatures took action now is predicated on understanding what measures were found objectionable while the VRA was in effect. Given the near consensus of scholars about the importance of the VRA in principle, the fallout from its recent gutting will undoubtedly reshape this field of research. Considering the policymaking efforts from 1965 – 2013 and those from mid-2013 and on raises the question of how different states and localities behaved under this regulation. Extending the conversation toward the laws passed by state and local lawmakers during and after VRA coverage is the logical next step in evaluating whether the misgivings about the success and mechanisms put forth by VRA scholars were warranted or not.

Evaluating Government Action in Connection to the VRA

Section 5 of the VRA is unique in how it permeated throughout American democracy. As mentioned above, it broke the usual federalism mold, only affected certain states and localities, and was caught between two opposing ideals of democracy. The restrictions shouldered by state legislatures and local governments surely hampered their election policy goals many times, but the extent to which this marked a substantive difference in enacted policies is still up for debate. Today, the recent actions taken by state legislatures provide an opportunity to consider the reach of Section 5 in a new light, with the benefit of historical data.

Given this new restoration of state sovereignty, there are two main paths that state legislatures could follow. The first is the continuation of similar election policies to those that were not objected to under the VRA, from 1965 – 2013. The rationale for this path is that the VRA had progressive and lasting effects within the state, thereby changing attitudes and

expectations about what policies were acceptable and racially inclusive. This fits into the idea that the VRA had run its course and was no longer a necessary regulatory tool. Alternatively, these states may have been waiting for the first opportunity to push through legislation that would have been objected to through preclearance, which would indicate that the VRA did not change how lawmakers evaluate policies. In other words, have states actually reformed from Section 5 coverage, or has any decline in restrictive policies been a result of learning what specific policies would be blocked via the preclearance process? Quantifying the policy patterns in the VRA era helps to assess the extent to which state and local policy preferences were prevented, allowing a more informed discussion about the merits of a trade-off between state's rights and voting equality to take place. More pragmatically, these findings have a role in directing the debate on the future of preclearance coverage and further VRA reform.

By examining the connection of state and local policies to recent developments in the post-Section 4 era of the VRA, Section 5 can be contextualized with respect to its varied effect on state and local government for nearly five decades. Evaluating the arc of states' policy development is key to understanding the reach of Section 5 of the VRA.

How to Assess Policymaking Action in Response to the VRA

Now that there has been a flurry of state legislative activity in the wake of the Shelby County decision, the ideas put forth by previous literature are ready to face initial evaluation. Has the VRA outlived its vitality, or was it vanquished too soon? Moreover, to what extent has the reach of state legislative power grown? With newfound autonomy in election policy, states have wasted little time in passing legislation in the past year. For instance, merely two hours after the Supreme Court decision, Texas implemented a photo identification law that had previously been

found discriminatory. All told, eight out of the fifteen states that had been subject to Section 5 have moved toward more restrictive voting policies.[45] While the true test of the electoral fallout (or lack thereof) from the overturn of Sections 4b and 5 must wait for deeper analysis of the election cycles in 2014, 2016, and beyond, the immediate response of state legislatures is likely able to foreshadow some of the long-term outcomes.

In order to completely grasp the significance of the recent changes in voting laws by formerly covered states, their legislative capabilities during the VRA period must be understood. I explore this phenomenon by coding state election policies from the ten states that were covered by Section 5. The majority of this study focuses solely on election laws that were objected to by the Attorney General under the Section 5 preclearance procedures. In total, there are 853 individual policies included, stemming from the nine states that were fully covered by Section 5 (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia), as well as North Carolina, which had nearly half of its counties covered by the Act. Additionally, statewide policies enacted after the *Shelby County* decision are considered with a more qualitative view and in comparison to other states' action. Studying the changes in state and local policies in these states is key to evaluating the overall regulatory effect afforded by the VRA.

As a point of comparison, I will also examine the recent activity of four states that have strong demographic and ideological similarities to one or more of the Section 5 states, yet have never been covered in any capacity by this section of the VRA. Included in this analysis are Tennessee, Delaware, Arkansas, and Nevada. I argue that these specific cases illustrate the struggle to simplify which states are the biggest threats to minority voting rights, despite intrastate similarities in minority population or measured prejudice. These quasi-control states were chosen in order to mirror the present profile of formerly covered states, since the

comparison is mainly confined to after the *Shelby County* decision. With that in mind, Tennessee, Delaware, and Arkansas serve as analogues to the seven southern states in this analysis, leaving Nevada to roughly parallel Arizona, Texas, and to a lesser degree, Alaska.

The demographic and ideological information of the Section 5 states as compared to their counterparts are shown in Tables 1 and 2 below. See Appendix 1 for a complete breakdown of the relevant statistics for the formerly covered states. Demographic data is from the United States Census Bureau, and is drawn from the 2010 census.[46] The measure of state ideology is drawn from the data analysis of Elmendorf and Spencer, who tabulated responses to the 2008 National Annenberg Election Survey (NAES) and recorded the percentage of a state's residents who scored at least one standard deviation above the national average on racial prejudice.[47] This data is presented as a rank relative to the other 49 states, and the District of Colombia, and a lower number means greater prejudice against blacks.

DEMOGRAPHY AND IDEOLOGY	**AL, GA, LA, MS, NC, SC, VA**	**Arkansas**	**Delaware**	**Tennessee**
Black Population	28.2%	15.6%	22.0%	17.0%
Prejudice Rank	6.9	6	12	13

TABLE 1: Demography and Ideology of Racial Minority States
Source: US Census Bureau, 2010; *Election Law Blog*

DEMOGRAPHY AND IDEOLOGY	**Alaska***	**Arizona**	**Texas**	**Nevada**
Hispanic (*Indigenous) Population	14.8%	30.2%	38.2%	27.3%
Prejudice Rank	40	43	3	42

TABLE 2: Demography and Ideology of Language Minority States
Source: US Census Bureau, 2010; *Election Law Blog*

While some may point out that this is only a thin slice of the 35 states that were never subject to preclearance, evaluating these policy approaches is valuable because it has the ability to narrow the analytical lens of this research. Considering these four states in the period after the Supreme Court decision in mid-2013 contextualizes the immediate actions of the ten formerly

covered states. Judging the responses of these two types of states informs the discussion about whether any version of Section 5 makes sense, and what the VRA coverage formula got right and wrong. By placing modest controls on demographics and ideology, this juxtaposition becomes more meaningful. In short, the policies pursued by demographically similar states shed light as to whether the VRA was correctly targeted, which informs the discussion on the competing merits of the balance between federal regulation over electoral policies and state autonomy in lawmaking. As Chief Justice Roberts argued in his majority decision, the VRA "applies substantive standards quite different" to the Section 5 covered states.[48] Testing these cases uncovers whether these burdensome standards are merited, or only due to judgments on outdated demographics.

Finally, the individual cases from the ten Section 5 states are analyzed based on when the Attorney General objected to them. As a reminder, the period of 1965-1982 encompassed the beginning of the VRA and its additions of Texas, Arizona, and Alaska with the 1975 amendments, and ends with the amendments of 1982. The next period, 1982-2013, marks the time after the change from the VRA banning restrictive *intent* to restrictive *results.* Of course, the recent legislation stemming from these states will also be examined to take a first look at the consequences of the Supreme Court decision. As a whole, these eras of the VRA will provide an approximate assessment of states' trajectories over the Act's history.

For operationalization, there are two key ideas that need to be expanded on: policy autonomy, and electorally restrictive policies. The study uses the freedom that states and local governments have had in enacting laws that specifically implicate the electoral process to compare states' behavior to each another. The basic framework for this variable is broken into the three aforementioned periods of the VRA. First, the years from 1965-1982 marks a period in

which covered states were barred from passing legislation that was *intentionally* discriminatory. The following period, beginning after June 29, 1982 and lasting until the Supreme Court's decision in 2013, decreased policy autonomy by instructing objection to policies that *resulted* in a discriminatory effect. Lastly, the period from 2013 on marks the greatest policy autonomy for formerly covered states by waiving the need for federal preclearance. For the purpose of this study, the concept of electorally restrictive policies includes laws that suppress popular participation in elections by either limiting turnout or creating unequal conditions for eligible voters in a way that disadvantages racial or language minority populations.

In all cases, unless otherwise mentioned, an electorally restrictive policy will have to fall into or resemble one of the following categories, which will be more fully explained below: districting, structural, procedural, registration, or suppression. Districting policies for congressional districts that do not originate from the state legislature are not included. Currently, the only states in the study affected in this way are Arizona (independent commission), Virginia (advisory commission), and Alaska (one representative and therefore no districts).[49] Otherwise, districting decisions are at the purview of state and local officials, and therefore are necessary for this analysis. Any electorally restrictive policies not included among these categories are a result of fitting into multiple categories. Such laws are marked as "multiple categories." One type of policy that resulted in many objections but is not included here is annexation. As cities and counties annexed neighboring areas, districting plans would often be objected to as they failed to account for the demographic shift in population. Since these policies were rarely enacted in an effort to affect elections and because the Attorney General's objection was often overturned after a new plan was submitted, annexation policies have been omitted from this study.

These measures of electoral restriction are reliable largely due to the uniformity of classification between states. While there is surely nuance, policies that address each of the outlined areas of election law usually fit into one (or more) of the broad categories. The interaction between the legislation and the VRA is clear and part of the public record; all of the Department of Justice Section 5 objections are catalogued online. Furthermore, this class of policies have been viewed, and often proven, to have a negative effect on the ability of minority voters to select candidates of their choice. Validity of this study is therefore supported both by the body research which showed a decline in discrimination in voting practices with the ban of these electorally restrictive policies,[50] and by recent scholarship which indicates that recent policies post-VRA are widely disenfranchising. The Brennan Center for Justice's analysis of restrictive voting legislation reported that the laws could make voting a "significant" challenge for more than 5 million eligible voters in 2012.[51] Although one study suggested that early voting may actually decrease turnout,[52] the effect may not be uniform across racial, economic, and language backgrounds. Since the VRA was enacted with the intent of specifically protecting minority voting rights, policies that may not affect overall turnout, yet disproportionately affect certain populations, fall under the Act's purview. To paraphrase the 1982 VRA amendments, the results outweigh the intent.

Identification and examination of the relevant election policies for this study are found primarily through the historical archives of the United States Department of Justice (DOJ). The DOJ records all of the Attorneys General's objection letters for each Section 5 violation by state.[53] These data will provide the specific cases of municipal, county, and state legislation that were objected to by the Attorney General, meaning that they were denied after enactment via the preclearance process. Considering that bills have historically been objected to by the Attorney

General at a rate of only about one percent of the total number reviewed, it is vital to isolate the particular instances of discriminatory state and local action.[54] This source includes all of the necessary data except for the four quasi-control states and for all states after 2013.

To supplement the DOJ and include the states that were never covered by Section 5, I primarily use cases compiled by the Brennan Center for Justice report on restrictive policies after 2010,[55] as well as the elections legislation database from the National Conference of State Legislatures (NCSL).[56] These additional resources only include statewide policies, leaving out municipal and county level laws. Accordingly, the aspect of this study covered by these sources takes on a more qualitative look at recent patterns in election policy and their place among historical developments.

Motivated by my hypothesis that the policies in periods of more state autonomy results in a greater rate of electorally restrictive policies, my data collection includes almost all of the policies objected to under Section 5 for each of the ten covered states. The strategy for evaluating and charting this state and local behavior consists of coding each of the states' policies on the following analytical dimensions:

- Date of Objection
- State/County/City Level of Government
- Electoral Restriction Category

These measures will allow my analysis to incorporate multiple approaches to the idea of state variation in election policy. These three categories, along with the policy itself, cover the What, When, Where, and How of each objectionable policy. Isolating these criteria is an important part of revising the VRA to be better targeted at preventing discriminatory policies. Part of the Supreme Court's reasoning in *Shelby County* was that Congress had not "eased the restrictions of

Section 5 or narrowed the scope of the coverage formula" when reauthorizing the VRA.[57] Ignoring the "current data reflecting current needs"[58] was part of Section 4's demise, and necessitates a fresh look at state and local behavior under the VRA to inform a new policy direction today.

The number of restrictive policies objected to provide a preliminary picture of the relative policy overreach of each state. Comparing the rate of restrictive policies over time may indicate trends in overall objections due to state and local autonomy or in particular states with respect to the type of policies objected to. Understanding these historical trends by when and where they take place is crucial for evaluating the disparate impact of Section 5 across various jurisdictions. Additionally, this categorization of policy data will support the contemporary comparison between states that were covered by Section 5, as well as those which were never covered. Examining the actions of other, similar states can further contextualize the most recent pattern of policy behavior uncovered in some or all of the Section 5 states. This hybrid between quantitative and qualitative data is well suited to assess state and local policies, notably because of the many policies objected to under Section 5 as well as the many different ways that states have attempted to circumvent the VRA's provisions.

This design aims to delve deeper into the behavior of states and localities in response to regulation via the VRA. The contrast that I predict between Section 5 covered and non-covered states, as well as discrepancies among the covered states at different periods of autonomy, can speak to the emerging debate over the future of the VRA about if a new coverage formula is necessary and, if so, what it should look like. Centering my research on policies that are carefully coded as electorally restrictive, particularly for minority voters, will provide a clear analysis of the different policy decisions among the studied states.

Having said this, there are a few potential problems that may result from my case selection and method. First, the four quasi-control states do not have any similar archive of policies that, in this case, would have been objected to under Section 5. Without a directly analogous measure, these states serve primarily as a glimpse into the behavior of never-covered states, especially in the recent period in which all states have been under the same regulation. Demographics and even ideological measures do not tell the whole story, but the comparison can remain valuable as part of the overall narrative of variation in electoral policies. Considering the concept of electorally restrictive policies, there is no straightforward way to measure which policy is more or less restrictive in nature. Since this concept is not directly quantifiable, the resulting data may overstate the action of some states while missing the severity of restriction in states with potentially fewer policies overall. For instance, a single polling place location change is counted as one policy, as is an omnibus bill including districting and structural changes. Finally, this approach considers state legislatures and local governments as if they act in a vacuum, with little reaction to external forces. Surely, election policies are often part of larger partisan or nationwide trends, and the notion that lawmakers do not alter their policymaking focuses in response to VRA regulation is impractical. These concerns will be addressed more completely in the discussion following the results of the study below. In sum, this analysis of election policies over the history of VRA enforcement of Section 5 serves as an indication of which policies states favored, the variance in state behavior, and how the VRA affected state practices in policymaking.

Tracking Section 5: State Variation in Policy and Purpose

With the benefit of hindsight, the initial coverage formula in Section 4 of the VRA may seem to be rough around the edges at best. The inclusion of states based on a discriminatory tool or device to limit voting, black turnout for a single election, or the number of minority language speakers may have been a blunt tool with which to address the larger issue of unimpeded access to voting for racial and ethnic minorities. As will shortly become clear if it is not already, racism and discriminatory election practices did not evaporate after the 1960s. As state politics and demographics changed, the coverage formula of the VRA remained the same. Mapping the policies deemed objectionable by the Attorney General over the life of Section 5 helps expose and disentangle which states were most hindered in passing election policies and which states operated relatively free of federal objection.

In the following analysis, I consider state behavior across four key metrics in order to understand their policy trajectory under the VRA. These include the total number of policies that were objected to, the time period in which each policy objected to, the level of government responsible for each policy, and the category of electoral restriction in each policy. As mentioned above, these 853 policies are categorized into five types of electoral restriction: districting, structural, procedural, registration, and suppression.

Districting – 344 Total Policies

These policies include state, county, and city attempts at drawing voting district boundaries in such a way to disadvantage racial or language minority populations. Restrictive policies in this category often occur through packing minority-majority districts or fragmenting black or Hispanic populations. As a whole, this process is referred to as malapportionment, meaning that the districts are unfairly distributed over the population of a region.

Districting is the most common type of policy in this study, and examples of this type of electoral restriction can be found in any of the ten states in this analysis. In fact, it is not uncommon to find instances of states or counties having multiple policies objected to during the same period of redistricting, as was the case in Barbour County, Alabama in 1981 or the State of Mississippi in 1991.

Structural – 310 Total Policies

Policies included in this category implicate many different aspects of elections, but can broadly be defined as those that alter the rules or methods of elections or government structure in a way that disadvantages minority electoral influence. Examples of this include replacing single-member districted elections with at-large elections; changing elected positions into appointed positions; and requiring candidates receive a majority of the votes to win, rather than a plurality.

Two of the most prevalent structural restrictive policies at the county and city levels of government were numbered posts and staggered terms. Numbered posts institute pseudo-single-member districts by having candidates represent a specific district, but they are voted on at-large. Staggered terms meant that a majority white community could elect their choice of council member, for example, every election. Without staggered terms, electing the top two-supported candidates could result in a candidate favored by the black minority. Of the 310 total structural policies included, about half involved at least one of these two policy proposals.

Procedural – 110 Total Policies

The restrictive policies contained in the procedural category are some of the most highly visible initiatives that many people immediately think of when they envision discriminatory election laws. Most simply, these policies change the process by which people cast their ballots, or the schedule of implementation for other election policy changes. Objections to procedural policies

are often directed at polling place relocations, voter identification requirements, lack of bilingual materials, and the selection of election dates that hinder certain segments of the electorate.

Additionally, many states and counties attempted to pass policies limiting assistance to illiterate or disabled voters. For instance, Mississippi twice tried to disallow assistance to illiterate, blind, and disabled voters in 1969 and 1979, policies that were objected to by the Attorney General because of the disparate impact on minority communities without a compelling state interest. Procedural policy objections center on equal access to the polls, a cornerstone of the VRA.

Registration – 27 Total Policies

Many states and localities attempted to use the registration process as a method of limiting minority electoral influence. Policies in this category include those that place unequal or unnecessary restrictions on the timing or location required for voter registration. Other policies range from inadequate access to bilingual materials to voter purges and a mandatory re-identification process, which aimed to slash the number of eligible minority voters.

One of the more extreme examples of discriminatory registration policies is drawn from DeKalb County, Georgia, where Section 5 prevented neighborhood registration drives from being outright banned in 1980 and from being restricted to even-numbered years in 1982. Obstructing the registration process almost always constitutes discriminatory policy, as minority populations are often under-registered to begin with.

Suppression – 23 Total Policies

Policies that fall into the suppression category are usually targeted at candidates, political parties, or both. The most common policy objections of this type include increases in candidate filing fees or signature requirements, and additional candidate qualifications, such as an educational

requirement for school board members. Other instances of suppression limited independent or new parties from participating in primary elections. A 1969 law in Alabama denying access to the primary election for newly formed (read: black) political parties was struck down by the Attorney General and represents one of these handful of objections.

Multiple Categories – 39 Total Policies

This category serves as a catchall for all of the policies that fit into more than one of the above categories. While these policies are often a combination between structural and districting restrictions, there are also a few instances of structural and suppression policies, and even one procedural and registration policy. In the most common type of policy in this category, counties and cities alter representation to single-member districts – a goal of the VRA – while simultaneously redistricting to produce new districts that are severely malapportioned. For example, this tactic garnered Texas 13 objections between 1980 and 1993.

As the following analysis suggests, there is little uniformity to the policy path followed by states formerly covered under Section 5. Some general tendencies do shine through when comparing state and local policies over time and among policy categories. More arresting patterns develop within certain states, however, particularly when examining the specific policies in question. After considering the nearly fifty year interplay between these states and Section 5, the comparison to the actions of similar states and the post-coverage period provides further insight into the overarching influence of the VRA. All of the policies considered are drawn from the DOJ records on Section 5 objections. The complete dataset and supporting information not included in this section can be found on a Google Spreadsheet available via the link in the references section or the embedded hyperlink in this footnote.[59]

SAME COVERAGE, DIFFERENT OUTCOMES

First and foremost, it is essential to underscore the fact that the states covered by Section 5 did not and do not operate as a single unit. Surely there are similarities in both types and timing of policies, but each of the ten states forged its own relationship with the VRA. Note the variation in both total number of Section 5 objections (Chart 1) and the rate of objections as I briefly describe each state's Section 5 profile.

Alabama – 77 Total Objections; 1.60 Objections/Year

As one of the states most associated with the Civil Rights Movement, it may come as no surprise that Alabama has its fair share of Section 5 objections. In many ways, however, the state represents the middle ground of the study, aligning near the center in both total policies objected to and the rate of objections by level of government and by category of policy. Interestingly, Alabama saw only three objections after 1994, after averaging over 12 objections every five years beforehand. Despite this rapid decline, Alabama's Shelby County played the central role as the petitioner in the now landmark 2013 Supreme Court case.

Alaska – 1; 0.03/year

Clearly the outlier of the Section 5 covered states, Alaska only received one objection from the Attorney General in its 37 years of required preclearance. The 1993 state redistricting plan for the state house and senate was found to be malapportioned with regards to the Native Alaskan population. Remember Alaska's miniscule sample size when viewing the rate-based charts below.

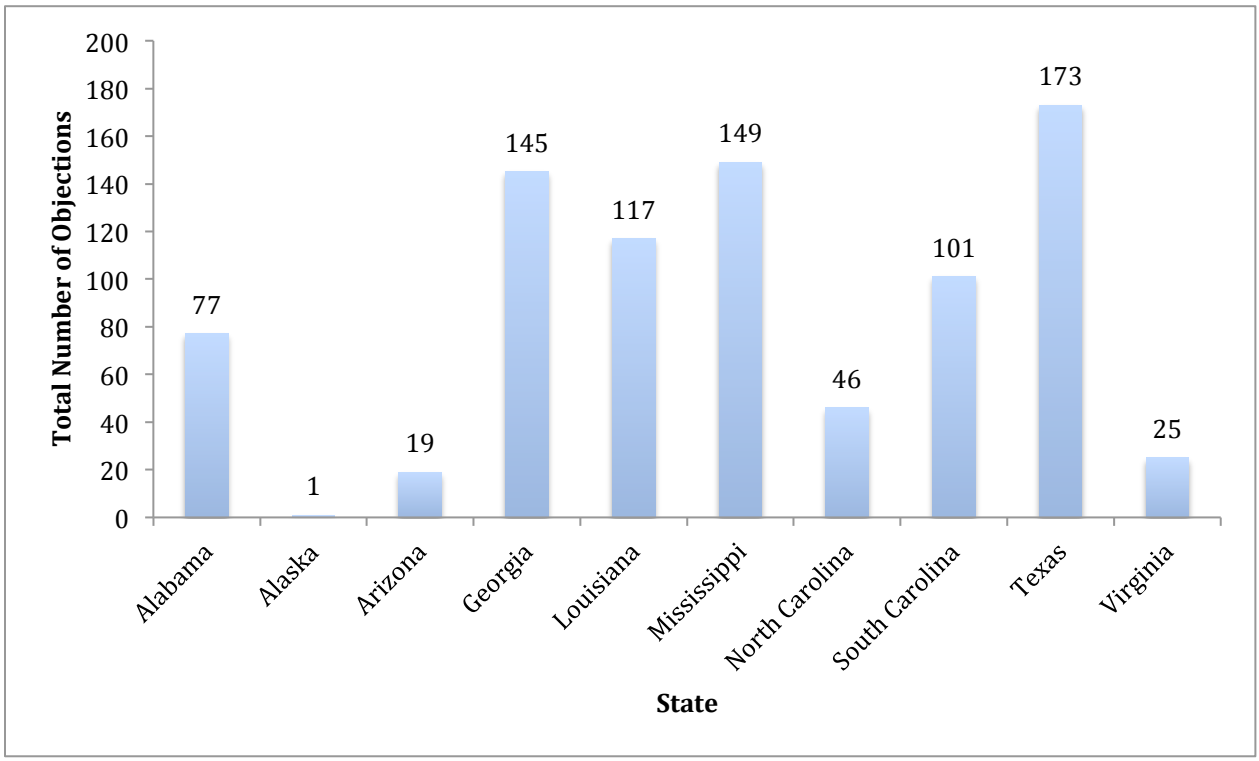

CHART 1: Total VRA Section 5 Objections by State
Note: Alaska, Arizona, and Texas were not covered until 1975

Arizona – 19; 0.50/year

Arizona had the second fewest objections, trailing only Alaska. Covered since 1975, the objections are concentrated in the decade between 1984-1994 (74% of all policies), and deal primarily with redistricting that fragmented Hispanic populations. Notably, Arizona was also covered for its Native American population, a population that was at the center of a 2003 objection to a change to at-large voting for the Coconino County Association for Vocations, Industry, and Technology.

Georgia – 145; 3.02/year

As one of the "Big 3" offenders along with Mississippi and Texas, Georgia policies were structurally restrictive in over half of the cases. Seemingly every city in the state borrowed from one another and attempted to enact laws regarding numbered posts, at-large elections, staggered terms, or majority vote requirements. Moreover, Georgia was one of only two states that had

most of its objections result from city-level policies, largely a construct of the general administrative level of the state.

Louisiana – 117; 2.44/year

Perhaps Louisiana could be characterized as an unglamorous offender. Besides an attempt at a photo identification requirement for registration in 1994, the state overwhelmingly produced relatively straightforward districting policies (72% of all policies), originating from the county level (70%), that were struck down due to malapportionment. Thinking back to McMillen's case study of Jefferson Parish, Louisiana, the number of objections in the state supports McMillen's assertion that "Section 5 has prevented Jefferson Parish from dodging the law as it did so successfully for almost 100 years."[60] The same sentiment can be applied to the entire state.

Mississippi – 149; 3.10/year

The next of the "Big 3," Mississippi's Section 5 objections mostly came from districting policies, with about 68% of all policies containing some type of malapportionment. Another pivotal state in the Civil Rights Movement, Mississippi was one of the states most vehemently active to stack the electoral deck against black voters via fragmentation and packing. About two thirds of the state's policies originate at the county level, indicating the most influential governing body for much of the state.

North Carolina – 46; 0.96/year

The only state in the study not completely covered by Section 5, North Carolina has a noticeably lower total number of objectionable policies than its southern neighbors. Similar to Georgia cities, North Carolina counties appeared to copy nearly identical structural policies in an effort to skirt federal oversight, resulting in numerous objections to numbered posts and staggered terms. Lacking complete Section 5 coverage, it is easy to speculate on the actions of the non-covered

counties and localities in the state. However, it is important to note that this study does not incorporate the differences between localities within North Carolina.

South Carolina – 101; 2.10/year

As one of the states historically known for asserting itself against the federal government, it is no surprise that South Carolina faced many Section 5 objections over the course of its coverage. Reflecting its northern counterpart, South Carolina counties also borrowed from one another, and at-large elections and majority vote requirements were the discriminatory practices en vogue in the state for much of the 1970s. Despite ranking fifth in total policies objected to, South Carolina had the most suppressive policies with seven, suggesting that the state had an increased focus on preventing strong minority leaders and parties from gaining traction.

Texas – 173; 4.55/year

Everything is bigger in Texas, and the amount of Section 5 objections is no exception. In ten fewer years of coverage, Texas amassed more objections than any other state and exhausted the Attorney General's office with a steady stream of discriminatory policies. Most remarkably, the state received 60 objections in its first five years of coverage. Representing a mix of structural and districting policies, this initial upheaval indicated that Texas was unique in that it didn't neatly fit in with either the language- or race-based categories of states. Instead, the heavily populated state of Texas combined a significant ethnic minority (Hispanic) with a history of racial discrimination (like other southern states), all contributing to its staggering number of objections.

Virginia – 25; 0.52/year

In many ways, Virginia is the exception to blanket statements about the southern states covered by Section 5. The state certainly was not immune to objections, but the quantity is significantly

lower than its covered neighbors to the south. While most of the Virginia's objections stemmed from malapportioned districts, there is a sprinkling of polling place relocations and structural changes, as well. The lack of a concentrated period of objections and lower overall total suggests that there is not a Virginia equivalent to the policy copying observed in many of the other studied states.

State	Objections/Year
Alabama	1.60
Alaska	0.03
Arizona	0.50
Georgia	3.02
Louisiana	2.44
Mississippi	3.10
North Carolina	0.96
South Carolina	2.10
Texas	4.55
Virginia	0.52

TABLE 3: VRA Objections per Year by State

What can we learn from the differences in state behavior and its rate of objection? First, it is critical to note that the one-to-one comparison of the policies that were objected to is a rough measure that does not adequately consider the relative "restrictiveness" of a policy, nor the maliciousness (or lack thereof) of the policymakers. However, the gap between Alaska and Texas should inspire closer examination. Perhaps states such as Alaska, Arizona, and Virginia should not have been captured under Section 4b's coverage formula. Is the benefit of stopping about one policy every two years worth reviewing each and every election policy these states produce? If so, then why not institute nationwide preclearance, as Aarons and Trahan-Liptak have argued? Of course, no state had the same number of policy objections year to year. Like the variation among the states, there has been a changing dynamic of Section 5 objections over time.

UNPACKING THE DECLINE OVER TIME

To assess any possible future directions of the Voting Rights Act, we must understand where enforcement of Section 5 stood before the Supreme Court decision in 2013. Looking back over

the history of policy objections by state uncovers a few prominent trends that merit explanation. Most noteworthy, the sharp decline in Section 5 objections in the 21st century seen in Chart 2 raises questions about state behavior as well as federal standards of regulation.

While the variation in total objections between the states renders the tracking five-year periods into a jumble of lines seen in Chart 2, there are general upticks that align with the beginning of each decade: 1970-74, 1980-84, and 1990-94. Much of this phenomenon is explained by the coupling of the decennial census and the state redistricting cycle. States, counties, and cities submitted redistricting plans within the first few years after a new census, and many of these proposals were discriminatory due to malapportionment. As the largest single category of policy objections, the districting bump can be readily detected among the states.

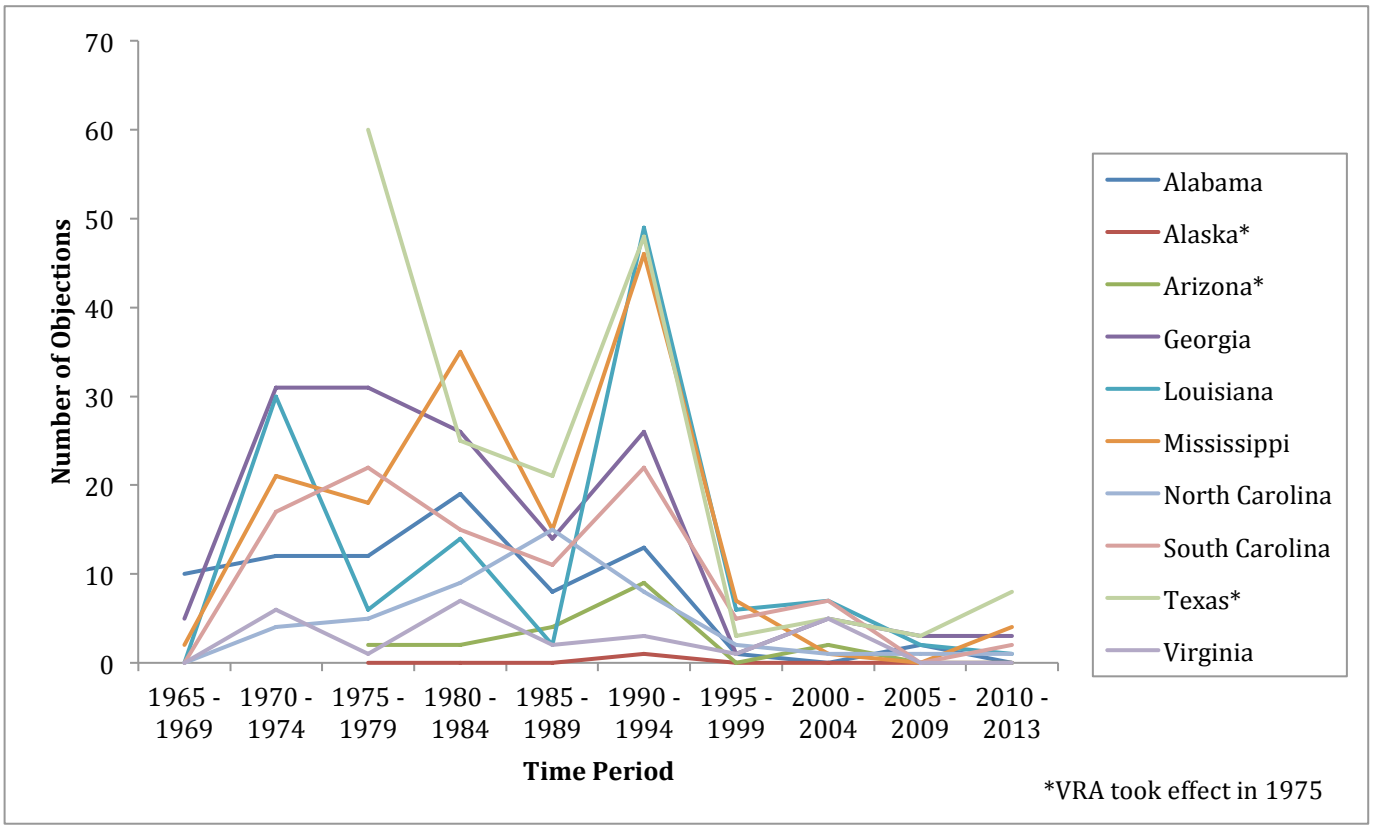

CHART 2: Voting Rights Act Section 5 Objections Over Time

The complete breakdown of five-year periods by state can be found below in Table 4, which includes a few other outliers. As discussed above, Texas' first five years under Section 5 saw an incredible rate of objection, as many policies were becoming subjected to preclearance for the first time. Arizona, Louisiana, Mississippi, South Carolina, and Texas all experienced at least double the objections from the 1985-1989 period to the 1990-1994 period. This rapid jump is tied directly with districting policy, but more research into the changes in state initiatives or shifts in Attorney General regulation is necessary to tease out what precipitated the rise. Some of the states exhibit policy clumping, in which similar policies are rejected within a few years of one another as a result of the borrowing that occurs, usually between local levels of government.

Time Period	Alabama	Alaska	Arizona	Georgia	Louisiana
1965 - 1969	10	-	-	5	0
1970 - 1974	12	-	-	31	30
1975 - 1979	12	0	2	31	6
1980 - 1984	19	0	2	26	14
1985 - 1989	8	0	4	14	2
1990 - 1994	13	1	9	26	49
1995 - 1999	1	0	0	1	6
2000 - 2004	0	0	2	5	7
2005 - 2009	2	0	0	3	2
2010 - 2013	0	0	0	3	1
Time Period	**Mississippi**	**North Carolina**	**South Carolina**	**Texas**	**Virginia**
1965 - 1969	2	0	0	-	0
1970 - 1974	21	4	17	-	6
1975 - 1979	18	5	22	60	1
1980 - 1984	35	9	15	25	7
1985 - 1989	15	15	11	21	2
1990 - 1994	46	8	22	48	3
1995 - 1999	7	2	5	3	1
2000 - 2004	1	1	7	5	5
2005 - 2009	0	1	0	3	0
2010 - 2013	4	1	2	8	0

TABLE 4: Number of VRA Section 5 Objections by Time Period and State

The most curious aspect of the data charting Section 5 objections over time is the sudden drop-off in policy objections beginning in the 1995-1999 period and continuing all the way through 2013. At first glance, this decline in objections appears to be evidence supporting the research of Issacharoff, Rivers, McMillen, and others who believed that the VRA and preclearance had begun to run its course. Through this line of thinking, it reasons that states and localities may have acclimated to a lawmaking climate where policies that would be objected to were no longer a part of the legislative discourse. If states had learned to not discriminate, perhaps the provisions of Section 5 were no longer necessary.

An alternative interpretation of the idea that states learned in response to decades of regulation is more cynical. Maybe states and localities merely leaned how to best avoid objections, or where to toe the line between acceptable and discriminatory. This argument was a sticking point for the four dissenting Supreme Court Justices in 2013, best summed up by Ruth Bader Ginsburg, who quipped, "throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."[61] Assessing the policy behavior of formerly covered states after the preclearance requirement was lifted in 2013 is a fundamental part of evaluating which kind of learning each state exhibited with the early 2000s decline in objections.

Another angle from which to approach the drop in policy objections is the regulatory side of the VRA and the Attorneys General. Under President George W. Bush, three different men held the office: John Ashcroft, Alberto Gonzales, and Michael Mukasey. While more research into the matter is necessary, it is plausible that an executive branch directive could be responsible for the stringency of Section 5 enforcement. The case of Georgia's 2006 voter identification law lends legitimacy to this argument, as Department of Justice staff members circulated a memo

addressing the risk of vote dilution, but were ultimately overruled by a partisan appointee.[62] Moreover, the Civil Rights Division of the DOJ, which handles the Section 5 reviewing process, lost "nearly 20 percent of its lawyers in 2005" and appears to be moving toward a more partisan operation.[63] Given the severity of the decline, it is likely a combination of both state learning and federal enforcement that created a climate of few objections in first decade-plus of the century.

The expected delineation marking a divide between the pre- and post-1982 amendments was not ultimately realized. Contrary to Christina Rivers' emphasis on the "conquered provinces," the 1982 shift from discriminatory *intent* to discriminatory *results*, seemed to be little more than a formality. Table 4 shows that states did not experience a significant rise in policy objections after 1982, and the uptick in the early 1990s is countered by the sharp decline immediately after. Perhaps an even more informative illustration of this continuity in enforcement standards is found in the text of the objection letters themselves. For instance, almost all objections prior to 1982 contain the phrase, "we are unable to conclude…that the imposition of [policy] will not have a racially discriminatory effect."[64] While more recent objections refer to the application of Section 5 to both intent and effect, most prior objections comfortably equated the discriminatory effect with evidence of intent. This reading of the VRA was probably more practical, as it is much simpler to judge results as opposed to the inner motivations of the lawmakers. With this new perspective, the 1982 amendments remain important because of their symbolic weight more so than their practical effects.

Before the mid-1990s, state and local electoral policymaking faced far more objections than afterward. Due to complimentary forces in state and local governments along with the Department of Justice, the number of total objections drastically declined. While this change

contextualizes the climate in which the Supreme Court acted to undermine preclearance, it does not tell us whether discriminatory policy initiatives actually declined at such a rate.

ORIGINS OF OBJECTIONS

As is often the case in American politics, the highest profile contests and issues command a disproportionate amount of attention compared to the areas that are actually closest to the voters. The same principle applies to Section 5 objections, which originated from policies introduced at the local level (county or city) in over 85% of the cases (See Chart 3 and Table 5 below). This domination of local policy is certainly a reflection of the sheer number of counties, cities, towns, and other municipalities in place to form policy, but it also reflects the amount of influence wielded by local lawmakers.

One quirk in the data is two of the biggest offenders, Georgia and Texas, have a higher frequency of city-level policies than county-level policies. As mentioned briefly above, this is certainly an outcome of the administrative structure of each state, but it also illustrates the challenge of targeting a blanket coverage formula across many states and localities. Learning where policy originates from state to state is necessary in making a future coverage plan that is effective in its application.

The policy objections emerging from county and city policies are marked by their uniformity in type and diversity in application. In other words, theses policies may be similar in content, but are frequently molded to any form of government in order to prevent minority influence. For instance, the 344 districting policies objected to all have some form of malapportionment involved, but apply to city councils, county commissioners, city or county school districts, college board districts, and even one underground water conservation district.

The breadth of attempts to disadvantage minority voters is thrust into view after only a few minutes of perusing the DOJ archives; it is not uncommon for a single city or county to have amassed five or more policy objections over a period of a few decades.

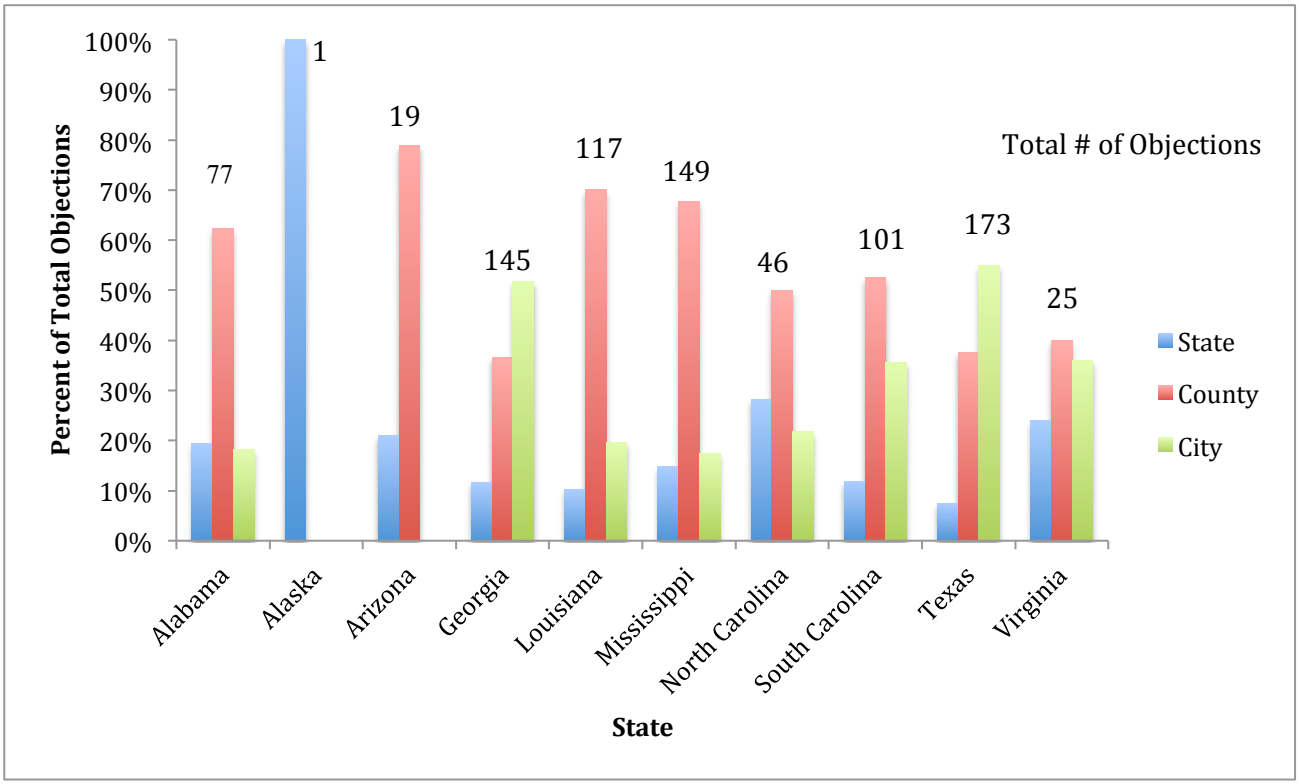

CHART 3: Rate of VRA Section 5 Objections by Level of Government

On the other hand, the scarcity of state policies in this study should not be mistaken for unimportance. When states receive objections under Section 5, the electoral issue involved receives widespread scrutiny. For example, congressional redistricting has become must-view legislative action as the problems associated with gerrymandered districts have fully penetrated the public consciousness. Other state policies become high profile in part because they affect so many people by changing voting procedures. This category includes voter identification, assistance to illiterate voters, ballot design, and changes in election dates, all of which are

tangible differences for many voters, whereas understanding the structural system by which candidates win elections is less accessible to the average voter.

Gov. Level	Alabama	Alaska	Arizona	Georgia	Louisiana
State	15	1	4	17	12
County	48	0	15	53	82
City	14	0	0	75	23
Gov. Level	**Mississippi**	**North Carolina**	**South Carolina**	**Texas**	**Virginia**
State	22	13	12	13	6
County	101	23	53	65	10
City	26	10	36	95	9

TABLE 5: Total Number of Section 5 Objections by Level of Government and State

In the months since the *Shelby County* decision, almost all of the attention has been directed toward state legislatures and their electoral policy initiatives. While I perpetuate the same focus in this paper due to the lack of available data and the broad conclusions that can be drawn from state action, it is vital to continue studying the behavior of local governments, which are shown here to be the primary gatekeepers of discriminatory power structures.

RESTRICTIVE POLICIES: MECHANISMS AND DEVELOPMENT

Although likely redundant after the preceding rundowns of state policy histories and the categories of restrictive policies in this study, I will reiterate the fact that the two most common types of policy objections under Section 5 are districting and structural. The overall rate of Section 5 objection by category can be seen below in Chart 4. The impersonal nature of the two most prominent categories is potentially indicative of state and local government preferences with considering the most effective method of discrimination. States and localities often faced multiple rejections for a single attempt at redistricting, such as Mississippi in 1991 and stretching into 1992. Of course, this component of districting inflates the total number of policies, but also

underscores the stubbornness of states and counties that refused to adhere to the recommendations of the Attorney General after one or even two objections.

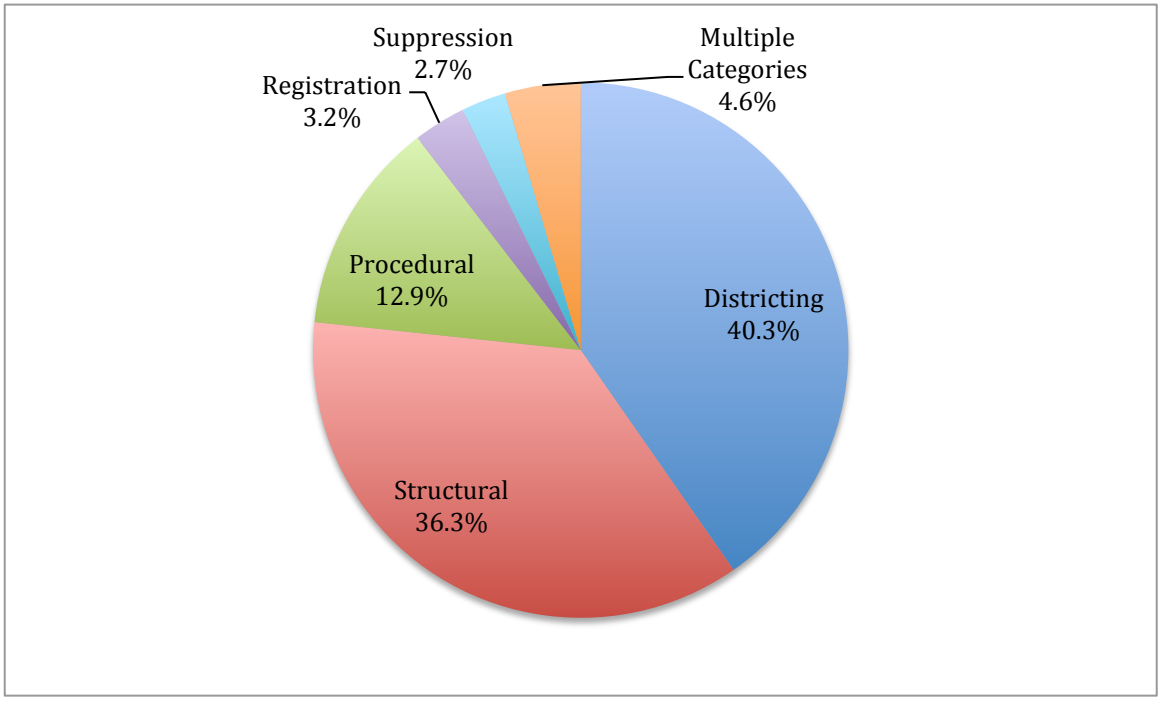

Chart 4: Overall VRA Section 5 Objections by Category

Structural policies also resulted in multiple attempts, at times. Multi-membered districts and majority vote requirements often were tweaked in search of approval only to face objection once again. Much of what sets structural policies apart is the role of context. A malapportioned district is not acceptable in any context, but an at-large seat can be either restrictive or not, depending on specifics regarding majority voting, other districts, and requirements to be a candidate. This ambiguity contributed to the borrowing referred to previously in this paper, where counties and cities copied one another's policies in hope that their version would not be objected to. While this method undoubtedly worked in some jurisdictions, many others were met with the same objections from the Attorney General.

Less than one quarter of the policy objections deal with some of the most pressing issues of today: voting identification, early voting, and registration requirements. With procedural laws

such as voter identification, it is often easier to recognize where and how discrimination could occur. As mentioned above, this propels these types of policies into the public eye and opens them up for study and debate.

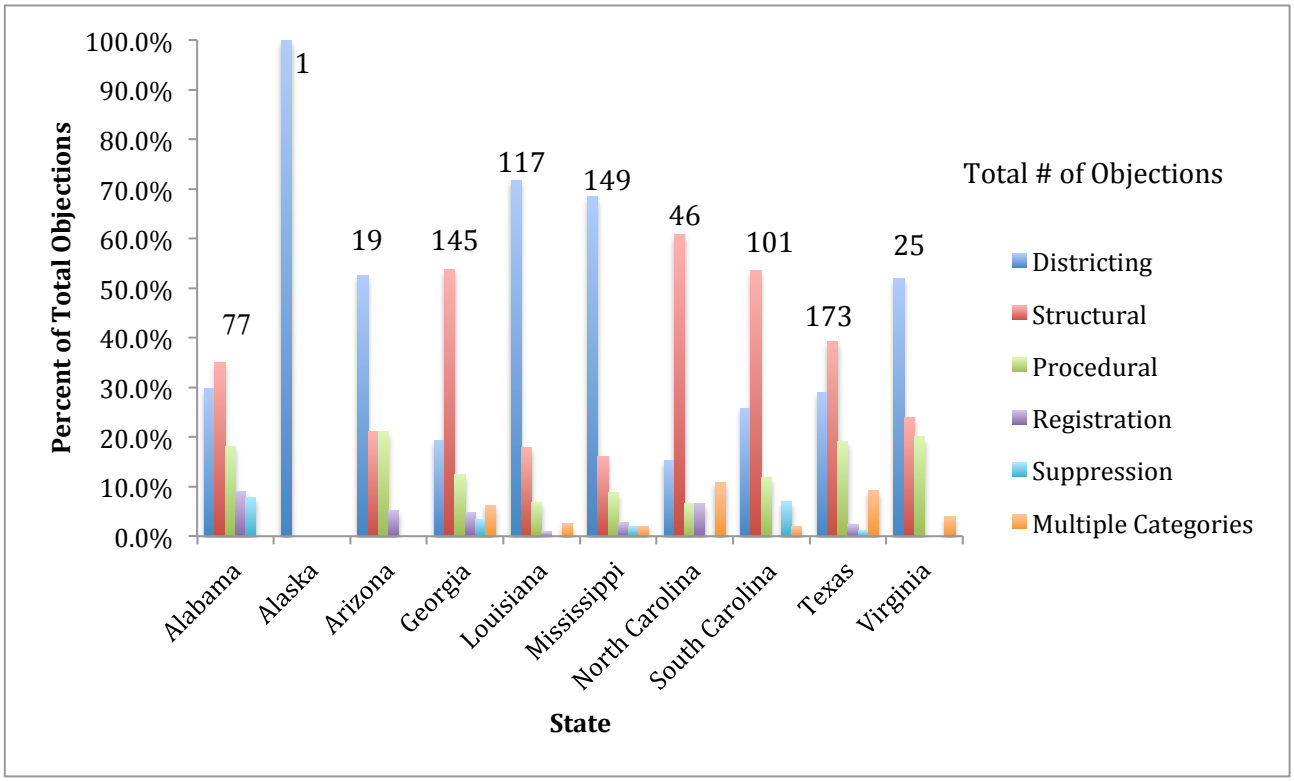

CHART 5: Rate of VRA Section 5 Objections by Category

Chart 5 sheds a different light on the dominance of districting and structural policies in Section 5 objections. Boundaries and election methods were the underlying mechanisms to the majority of restrictive electoral policy development throughout the VRA era, which resulted in policy objections addressing those areas. Considering the 21st century decline in policy objections once again, it is difficult to track where and how states changed their policy path, at least when only using the DOJ records. However, districting policies are now often discussed in a partisan context as opposed to an ethnic or racial perspective. Note that direct suppression is the smallest single category of policy objection in every state. This indicates that policymakers may shy away from the most overt discriminatory tactics in favor of those that are less obvious

on the surface. Granted, this is speculative since the data for the policies that were *not* objected to are not a part of this study. Nevertheless, identifying where states and localities use stand-ins such as partisanship, economic status, or education level to implicitly target minority populations is crucial in the ongoing effort combatting discriminatory policies. Just as malapportionment, numbered posts, and educational requirements were used to obstruct minority influence in the VRA era, similar practices are still around today, albeit in different forms.

THE DIFFERENCE MADE BY BURDEN OF PROOF

Returning to the comparison of the ten covered states to those that have never been covered by Section 5 of the VRA underscores the unparalleled relationship forged via preclearance. In this brief examination of Arkansas, Delaware, Tennessee, and Nevada – states that are similar to the covered states at least on a superficial level – I find that their experiences are incredibly divergent from that of the covered states. Probing into the history of these quasi-control cases shows a policy arc that is relatively free of federal interference, but recent activity suggests that this does not directly equate to policymaking that is not restrictive in nature.

Without directly comparable data, there is not a way of coding and analyzing the election policy histories of the non-covered states in the same way as above. However, the Department of Justice does maintain records of the various court cases arising under provisions of the VRA.[65] In this archive, there are only four federal cases that originated in the four quasi-control states studied here, two in Tennessee and one in both Arkansas and Nevada. In Tennessee, the U.S. Government challenged a 2001 Crockett County policy regarding minority vote dilution due to the districting plan for the election of county commissioners and was the only one of the four cases stemming from VRA provisions.[66] The other instances of legal action in the state addressed

Tennessee's implementation of the National Voter Registration Act of 1993 (NVRA),[67] Arkansas' Pulaski County implementation of Section 8 of the NVRA,[68] and Nevada's 2010 compliance issue with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).[69] Although only one policy here violated the VRA specifically and was met with legal redress, it would be naïve to think that they were the only potentially objectionable policies passed in these four states over the half-century of the VRA's existence.

Undoubtedly, these instances of VRA regulation over non-covered states are dwarfed by the reach Section 5 had into state policies. Rather than being indicative of a stark divide between never covered states and formerly covered states, this lack of federal regulation is better explained by the reversal in burden of proof from state or local government to federal government. Instead of requiring states to justify changing their election policies in light of the impact of the laws on minority electoral influence, without preclearance the federal government must prove that the populations in question suffer as a result of the policy. The latter approach sets a much higher bar of objection and often requires lengthy legal battles, making it no surprise that there have been far fewer VRA court cases overturning state policy than Section 5 objections. Delving into the behavior of the two groups of states after the Supreme Court decision left them in equal standing is necessary in order to uncover a more telling comparison of policy direction.

While the action, or lack thereof, of the four control states does not provide great insight into the overall interactions between the fifty states and the VRA, it does show that simple indicators such as racial makeup and ideology do not solely drive policy. This is hardly a revolutionary idea, but it does invite additional factors into the discussion about the source of restrictive policies, such as policy history and partisanship. Texas, Mississippi, and Georgia

continue to prominently stand out in relation to these four states (21, 7, and 5 comparable cases, respectively),[70] but it is less clear as to whether there is a meaningful difference between the non-covered states and Virginia or Arizona, for example. Continuing to monitor state behavior after preclearance is an important part of mapping which states are actually the biggest violators of voting rights, and which happened to be under more scrutiny and therefore punished more frequently.

UNBURDENED OR UNLEASHED?

State actions immediately after the Supreme Court decision in mid-2013 removed states from the preclearance requirement highlight why the burden of proof is such a powerful tool for policymaking and regulating efforts. In less than two years since the decision, seven of the ten formerly covered states have enacted state-level policies that would almost certainly be classified as restrictive in this study, that is to say objected to by the Attorney General. Chief Justice Roberts wrote for the majority in the *Shelby County* decision that, "things have changed dramatically" over the VRA's 50 years, and "blatantly discriminatory evasions of federal decrees are rare."[71] Beginning with fervor in 2011, but especially after the decision was read, states began to challenge the Court's perception of the current conditions for electoral policymaking by passing restrictive policies that were not subject to preclearance and could not be objected to before enactment (See Table 6 below). Reaching back to 2011 is necessary to encapsulate this post-VRA era both because of the time necessary to review and challenge potentially restrictive policies and to reflect both sides of identical policymaking in some of the states that spanned the Supreme Court decision.

The most striking trend of the period since *Shelby County* is the frequency of states enacting procedural electoral policies. In this new wave of unbridled policymaking, the formerly covered states are showing a similar proclivity as counties and cities did under Section 5 in that they are borrowing policy initiatives from other like-minded areas. Six of the seven states that have acted in this recent period have instituted voter identification laws. Certainly these laws have been a central goal of conservative lawmakers nationwide, but it remains shocking that photo identification policies objected to due to their discriminatory effect in South Carolina and Texas could be reinstated in basically the same form after the Supreme Court decision.

State	Policies
Alabama	Photo ID law (2011) Documentary proof of citizenship (2011)
Alaska	None
Arizona	None
Georgia	Reduction in early voting (2011)
Louisiana	None
Mississippi	Photo ID law (2011)
North Carolina	Elimination of same-day registration (2013) Reduction in early voting (2013) Ended pre-registration for 16- and 17-year-olds (2013) Photo ID law (2013)
South Carolina	Photo ID law (2011)
Texas	2011 Photo ID law re-enacted (2014) Restriction on voter registration drives (2013)
Virginia	Photo ID law (2013) Restriction to third-party voter registration (2013)
Arkansas	Photo ID law, subsequently struck down by state Supreme Court (2013)
Delaware	None
Nevada	None
Tennessee	Update to 2011 Photo ID law (2014) Reduction in early voting (2011) Documentary proof of citizenship (2011)

Table 6: Recent Restrictive Policies of Formerly Covered States and Quasi-Control States
Source: *Brennan Center for Justice*

Interestingly, the formerly covered states have shown a heavy preference for procedural and registration policies rather than following their favoring of districting and structural policies throughout the Section 5 era. Again, this reflects a nationwide partisan swell in support of restrictive policies, but remains notable nonetheless. While it is still too early to fully judge the aftermath of *Shelby County*, the immediate policy responses from many of the states – both formerly covered and not – indicates that Section 5 still held regulatory weight in the eyes of the states. After years of declining Section 5 objections, states seized at the opportunity to act unencumbered from soliciting the ruling of the federal government for each election policy.

To illustrate this point, I will briefly assume that all of the policies enacted by formerly covered states would have been objected to had preclearance still applied. Of course, this groups in policies that were not objected to and some that have cleared judicial hurdles already. However, all of the policies are restrictive in the sense that they make it more difficult for people, often minorities, to cast a ballot and are therefore fair game for this comparison. In the five years surrounding the 2013 decision, 2010-2014, there were 32 restrictive policies either objected to by the Attorney General or enacted at the state level and included in the table above. The previous five-year period, 2005-2009, included only 11 policy objections. The jump in restrictive policies after a two-decade decline is most logically explained by the confluence of pervasive national trends and the deregulation of election policy by the Supreme Court.

Two of the three formerly covered states that have not yet enacted restrictive election policies in the wake of *Shelby County* are Alaska and Arizona, which experienced the fewest objections in the Section 5 era out of all ten states. Acknowledging the still-too-small sample and the lack of data from cities and counties, perhaps these states are demonstrating a fundamental difference in the type of "learning" exhibited by formerly covered states. So far, these two states

fit in to the idea that the VRA and Section 5 was overdue for a change and that the states had learned their lesson. While this theory is largely disproven by the actions of the majority of the states, it should not be completely cast aside. Originally covered due to the presence of language minorities, and not expressly tied to race, there may be a persistence in restrictive policies that has carried forward with race, but is not matched by language-based coverage. Further study about why Alaska and Arizona have resisted the path of the other states throughout history and now may help inform the conversation about the future of a new coverage formula more tightly aimed at the states and localities that continually generate electorally restrictive policies.

Over the past five years, two of the quasi-control states have tried to install more restrictive policies, mirroring the majority of the formerly covered states. Arkansas' 2013 photo identification law, another example of a procedural policy, reached the state's Supreme Court before being struck down. Tennessee lawmakers succeeded where Arkansas' did not, however. The never-covered state enacted three restrictive policies dealing with registration and voting procedures in 2011, none of which were subject to preclearance, of course. After the *Shelby County* decision, Tennessee doubled down on its restrictive policies by updating its photo identification law. As these two states serve as analogues for the seven southern states in the analysis plus Texas, which all but one (Louisiana) have enacted restrictive policies, it appears as though the recent policymaking action transcends the immediate reaction to being set free from Section 5 as discussed above. Since some of the never-covered states also chose this moment in time to enact restrictive policies, this suggests that there was a national trend at play. To reiterate the conclusion from above, the end of preclearance and the national policy climate reinforced one another to bring about this upturn in restrictive policies.

The other two quasi-control states, Delaware and Nevada, have not passed new restrictive policies in the past five years. Despite the small sample size, this result fits in well with the idea that the southern states were much more quick to act. While Delaware closely resembles Virginia and North Carolina in black population and prejudice score,[72] its government has been far more liberal over the last five years, and therefore less likely to endorse the restrictive policies examined here.[73] As for the language-minority states, Nevada closely reflects Arizona in terms of Hispanic population, prejudice ranking, and lack of restrictive policies in the past few years.[74] While this may be no more than a coincidence, Nevada fits well into the emerging model of studied states that have not enacted restrictive policies – non-southern and relatively less conservative.

It very well may still be too early to tell how states and especially how localities will respond to their newfound autonomy in election policy. Initially, most formerly covered states appear to have been unleashed from their policymaking restraints and have responded with restrictive policies, some of which mirror policies that have been objected to in the past. Still, a few of the formerly covered states have not rushed to act, but have surely been unburdened in their passage of regular, nondiscriminatory election policies. If this divide persists, it will be a key aspect of the discussion about a reformed VRA Section 4b formula, which could reinstate the Section 5 preclearance provision in certain areas.

Reconsideration and Reform: The Future of Section 5

Moving into a new reality devoid of Section 5's protections against electorally restrictive policies sharply reconfigures the playing field between state policy interests and federal regulation. Section 2 of the VRA still is intact, carrying many of the same protections as Section

5, but lacking its proactive power. Without preclearance, the burden of proof shifts to the federal government and individuals in the assessment of whether a state or local policy violates the protections of the VRA. Although the Department of Justice can and has filed federal suits against states under Section 2 of the VRA, the process is much less efficient and more drawn out than exercising preclearance. Effectively placing the hurdle of proving discrimination higher in the formerly covered states, this approach has already proven to be abused by the numerous policies originating in the formerly covered states in the past two years post-*Shelby County*. While these new restrictive policies navigate through the protracted judicial process, elections may take place with minority populations facing unfair disadvantages affecting their electoral influence. The Supreme Court explicitly left open the possibility of Congress rewriting a coverage formula, which would reactivate Section 5. Drawing from the policy histories traced throughout this analysis, a reconstructed VRA directing preclearance at the states and localities most in need of federal regulation remains possible.

In January 2014, Congress put forth the Voting Rights Amendment Act, a bill that attempted to restore preclearance to jurisdictions that have committed five or more "voting rights violations" in the past fifteen years, or have extremely low minority voter turnout.[75] Despite being cosponsored by 177 Members of Congress, including 166 Democrats and 11 Republicans, the bill was buried in the Subcommittee on the Constitution and Civil Justice in mid-March, 2014.[76] Given the partisan reality hindering legislation of an updated VRA, the topic would benefit from additional research to better instruct the next iteration of a congressional VRA fix.

Throughout this research, the seemingly inescapable issue of partisanship intruded as a central factor in assessing restrictive electoral policies, despite my effort to avoid it wherever possible. While the Section 5 coverage period from 1965 to 2013 did not seem to directly vary

based on the party of the President and accordingly the Attorney General, it is not difficult to imagine a significantly different set of standards used to judge which policies constituted a discriminatory effect based on who occupied the White house at the time. Tracking the objections by Attorney General or by President may give greater insight into the historical foundations of the current partisan divide, especially with respect to the difference of opinions about the most high profile procedural policies such as voter identification and early voting.

Another beneficial avenue for future research is exploring the question of universal preclearance. Proposed and promoted by Aarons and Trahan-Liptak among others, this blanket coverage would prevent restrictive policies and equally affect each state and jurisdiction. Navigating through the Constitutional ambiguities and choosing the necessarily precise language for a new VRA amendment expanding preclearance would be a challenging, yet potentially revolutionizing next step in VRA scholarship.

In endeavoring to sketch the policy history of Section 5 of the VRA over the past fifty years, it has become apparent that the formerly covered states and localities created restrictive electoral policies within a context shaped by discrimination, the actions of neighboring jurisdictions, and partisan priorities. There may be a fewer number of total policies in need of objection today, thankfully, but these core factors continue to drive state and local policies. Accordingly, patterns develop around the beginning of decades due to redistricting, and trends emerge with the type of policies, i.e. districting and structural policies from the Section 5 era giving way to procedural and registration policies today. Some commentators treated the Supreme Court's ruling in *Shelby County* as if it was the kiss of death to any future for preclearance. State actions over the subsequent two years have reminded us of the crucial need for a regulatory review process to keep discriminatory state ambition in check, however. The

demands for a fair and representative government along with equal access to the polls remain imperative, and should form the basis of the guiding principles in the continuing effort to understand and to improve the Voting Rights Act.

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[1] *Shelby County* v. *Holder,* 570 U. S. (2013), pg. 4.
[2] Ibid., 66.
[3] McMillen, *The Effects of the Voting Rights Act: A Case Study* (1994).
[4] Issacharoff, *Is Section 5 of the Voting Rights Act a Victim of Its Own Success?* (2004)
[5] Rivers, *"Conquered Provinces"? The Voting Rights Act and State Power* (2006)
[6] Statutes Enforced by the Voting Section. *DOJ*.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] *Shelby County* v. *Holder* (2013), 28.
[11] Statutes Enforced by the Voting Section. *DOJ*.
[12] Pildes, *Diffusion of Political Power and the Voting Rights Act* (2000).
[13] Ibid., 121
[14] See Pildes, 2000; Pildes, 2011; Cox and Miles, 2008; and Kennedy, 2011
[15] Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*. (1991)
[16] Hutchings and Valentino. *The Centrality Of Race In American Politics*. (2004)
[17] Kousser, *The Immutability of Categories and the Reshaping of Southern Politics.* (2010)
[18] Crowley, *The Goddamndest, Toughest Voting Rights Bill': Critical Race Theory and the Voting Rights Act of 1965*. (2013)
[19] McMillen (1994)
[20] Ibid., 752
[21] Parkin and Zlotnick, *The Voting Rights Act and Latino Voter Registration: Symbolic Assistance for English-Speaking Latinos* (2014). Pg. 1
[22] Ansolabehere, *Race, Region, and Vote Choice in The 2008 Election: Implications for the Future of the Voting Rights Act.* (2010).
[23] Ibid., 1409
[24] Ellias, *The Voting Rights Act and Its Foreign Counterparts* (2008) Pg. 351
[25] Bentele and O'Brien, *Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies.* (2013)
[26] Ibid.
[27] Aarons, *Nationwide Preclearance of Section Five of the Voting Rights Act: Implementing the Fifteenth Amendment.* (1988)
[28] Trahan-Liptak, *Prohibiting Barriers to the Booth: The Case for Limited Nationwide Preclearance Under a Modified Voting Rights Act*. (2014)
[29] Aarons (1988). Pg. 114
[30] Trahan-Liptak (2014). Pg. 182
[31] Ibid.
[32] Ellias, (2008)
[33] Pildes, *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America.* (2011)
[34] Parkin and Zlotnick, (2014)
[35] McMillen, (1994)
[36] Issacharoff (2004).
[37] Ibid. 1728
[38] Burns, *Shelby County v. Holder and the Voting Rights Act: Getting the Right Answer with the Wrong Standard* (2012). Pg. 251
[39]Eggen, "Criticism of Voting Law Was Overruled." *The Washington Post*. 17 Nov. 2005.

[40] Ball, *Compromised Compliance: Implementation of the 1965 Voting Rights Act.* (1982)
[41] Rivers (2006).
[42] Ibid. 428, 430
[43] Ibid. 432
[44] Ibid. 434
[45] Liebelson, *The Supreme Court Gutted the Voting Rights Act. What Happened Next in These 8 States Will Not Shock You*. Mother Jones. 8 April 14.
[46] State and County QuickFacts, *US Census Bureau*. 2010.
[47] Elmendorf and Spencer, "Are the Covered States "More Racist" than Other States?" *Election Law Blog*. 4 Mar. 2013.
[48] *Shelby County* v. *Holder* (2013). Pg. 15
[49] Levitt, "Who Draws the Lines?" *All About Redistricting*. (2014)
[50] See McMillen 1994 and Ansolabehere 2010
[51] Weiser and Norden, *Voting Law Changes in 2012*. (2011)
[52] Burden, Canon, Mayer, and Moynihan. *Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform.* (2013)
[53] Section 5 Objection Letters. *DOJ.*
[54] Section 5 Objection Determinations. *DOJ.*
[55] *States With New Voting Restrictions Since 2010 Election*. Brennan Center for Justice. (2015)
[56] 2011-2015 Elections Legislation Database. *NSCL*, (2015)
[57] *Shelby County v. Holder* (2013). pg. 16
[58] Ibid., 20
[59] Grossman VRA Thesis Master Data
[60] McMillen (1994). Pg. 751
[61] *Shelby County v. Holder* (2013)
[62] Eggen (2005)
[63] Ibid.
[64] Section 5 Objection Letters. *DOJ*
[65] Civil Rights Division Voting Cases List. *DOJ*
[66] *United States v. Crockett County* (W.D. Tenn. 2001)
[67] *United States v. State of Tennessee* (M.D. Tenn. 2002)
[68] *United States v. Pulaski County* (E.D. Ark. 2004)
[69] Civil Rights Division Voting Cases List; Compliance letter between the United States and the State of Nevada, October 4, 2010. *DOJ*
[70] Civil Rights Division Voting Cases List. *DOJ*
[71] *Shelby County* v. *Holder* (2013). Pgs. 13 and 7.
[72] Delaware: 22.0% black, 12th most prejudiced; Virginia: 19.7%, 19th; North Carolina: 22.0%, 10th
[73] Partisan Voter Index by State, 1994-2014. *Cook Political Report* (2014)
[74] Nevada: 27.3% Hispanic, 42nd most prejudiced; Arizona: 30.2%, 43rd
[75] Voting Rights Amendment Act of 2014. H.R. 3899
[76] H.R. 3899; *Congress.gov*

Appendix 1. Full State Demographic and Ideological Data

State by State Demographic and Ideological Data	Black Population	Prejudice Rank
Alabama	26.5%	4
Georgia	31.2%	5
Louisiana	32.4%	1
Mississippi	37.4%	2
North Carolina	22.0%	10
South Carolina	28.0%	7
Virginia	19.7%	19
Average	**28.2%**	**6.9**
Arkansas	15.6%	6
Delaware	22.0%	12
Tennessee	17.0%	13
U.S. Average	**13.1%**	-
	Hispanic (*Indigenous) Population	**Prejudice Rank**
Alaska*	14.8%	40
Arizona	30.2%	43
Texas	38.2%	3
Average (Hispanic)	**34.2%**	**28.7**
Nevada	27.3%	42
U.S. Average	**16.9% (*1.2%)**	-

Sources: US Census Bureau, 2010; *Election Law Blog*

References

2011-2015 Elections Legislation Database. National Conference of State Legislatures, 2015. Web. 28 Mar. 2015.

Aarons, Dwight. "Nationwide Preclearance of Section Five of the Voting Rights Act: Implementing the Fifteenth Amendment." National Black Law Journal 11.93 (1988-1990): 93-116. HeinOnline. Web. 19 Apr. 2015.

Ansolabehere, Stephen, Nathaniel Persily, and Charles Stewart, III. "Race, Region, and Vote Choice in The 2008 Election: Implications for the Future of the Voting Rights Act." *Harvard Law Review* 123.6 (2010): 1385-436. *JSTOR*. Web. 24 Feb. 2014.

Ball, Howard, Dale Krane, and Thomas Lauth. 1982. Compromised Compliance: The Implementation of the 1965 Voting Rights Act. Westport, CT: Greenwood Press.

Bentele, Keith G., and Erin E. O'Brien. "Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies." Perspectives on Politics 11.04 (2013): 1088-116. Web. 19 Apr. 2015.

Burden, Barry C., David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan. "Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform." *American Journal of Political Science* 58, no. 1 (January 1, 2014): 95–109.

Burns, Michael James. "Shelby County v. Holder and the Voting Rights Act: Getting the Right Answer with the Wrong Standard." *Catholic University Law Review* 62 (2012): 227–252.

Civil Rights Division Voting Cases List. Civil Rights Division. Department of Justice, n.d. Web. 20 Apr. 2015.

Cox, Adam, and Thomas J. Miles. "Judging the Voting Rights Act." *Columbia Law Review* 108 (2008): 1–54.

Crowley, Ryan M. "'The Goddamndest, Toughest Voting Rights Bill': Critical Race Theory and the Voting Rights Act of 1965." *Race Ethnicity and Education* 16.5 (2013): 696-724. *Taylor Francis*. Web. 24 Feb. 2014.

Eggen, Dan. "Criticism of Voting Law Was Overruled." The Washington Post, 17 Nov. 2005. Web. 10 May 2014.

Ellias, Jared. "The Voting Rights Act and Its Foreign Counterparts." *Columbia Journal of Law and Social Problems* 41.3 (2008): 317-64. *HeinOnline*. Web. 24 Feb. 2014.

Elmendorf, Christopher S., and Douglas M. Spencer. "Are the Covered States "More Racist" than Other States?" *Election Law Blog*. 4 Mar. 2013. Web. 10 May 2014.

Grossman, Aaron. VRA and Section 5 State Policy History Data. 8 May 2015. Raw data. https://docs.google.com/spreadsheets/d/17qdcNDD_UcjfCvHAJYGUrjUJIN4GWqEGt-_iY31_rLg/edit?usp=sharing

Guinier, Lani. "The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success." *Michigan Law Review* 89.5 (1991): 1077-154. *JSTOR*. Web. 18 Feb. 2014.

H.R.3899 - Voting Rights Amendment Act of 2014. 113th Congress. Congress.gov, 2014. Web. 20 Apr. 2015.

Hutchings, Vincent L., and Nicholas A. Valentino. "The Centrality Of Race In American Politics." *Annual Review of Political Science* 7.1 (2004): 383-408. *JSTOR*. Web. 18 Feb. 2014.

Issacharoff, Samuel. "Is Section 5 of the Voting Rights Act a Victim of Its Own Success." *Columbia Law Review* 104.6 (2004): 1710-731. *JSTOR*. Web. 18 Feb. 2014.

Kennedy, David M. "What Pildes Missed: The Framers, the True Impact of the Voting Rights Act, and the Far Right." *California Law Review* 99 (2011): 351-357.

Kousser, J. Morgan. "The Immutability of Categories and the Reshaping of Southern Politics." *Annual Review of Political Science* 13.1 (2010): 365-83. *JSTOR*. Web. 18 Feb. 2014.

McMillen, Jeffrey D. "The Effects of the Voting Rights Act: A Case Study." *Washington University Law Quarterly* 72 (1994): 725 – 756.

Parkin, Michael, and Frances Zlotnick. "The Voting Rights Act and Latino Voter Registration: Symbolic Assistance for English-Speaking Latinos." Hispanic Journal of Behavioral Sciences 36.1 (2014): 48-63. Sage. Web. 29 Apr. 2014.

Partisan Voter Index by State, 1994-2014. Rep. Cook Political Report, 2013. Web. 20 Apr. 2015.

Pildes, Richard H. "Diffusion of Political Power and the Voting Rights Act." *Harvard Journal of Law & Public Policy* 24 (2000): 119-139.

Pildes, Richard H. "Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America." *California Law Review* 99 (2011): 273-333.

Rivers, Christina "'Conquered Provinces'? The Voting Rights Act and State Power." *Publius* 36.3 (2006): 421-442.

Section 5 Objection Letters." *Voting Determination Letters*. United States Department of Justice, Web. 28 March, 2015.

Shelby County v. Holder. No. 12–96. Supreme Court of the United States. 25 June 2013. 18 February 2014.

State and County QuickFacts. US Census Bureau, 2010. Web. 10 May 2014.

States With New Voting Restrictions Since 2010 Election. Rep. Brennan Center for Justice, 25 Mar. 2015. Web. 28 Mar. 2015.

Statutes Enforced by the Voting Section. *Civil Rights Division Statutes Overview*. The United States Department of Justice. Web. 10 May 2014.

Trahan-Liptak, Hayley. *Prohibiting Barriers to the Booth: The Case for Limited Nationwide Preclearance Under a Modified Voting Rights Act*, 34 B.C.J.L. & Soc. Just. 151 (2014)

Voting Rights Amendment Act of 2014, H.R. 3899, 113 Cong. (2014). Print.

Weiser, Wendy R., and Lawrence Norden. "Voting Law Changes in 2012." *Brennan Center for Justice at New York University School of Law*. (October 3, 2011)